

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Empowering Customers to Prevent and Detect |) | CG Docket No. 11-116 |
| Billing for Unauthorized Charges (Cramming) |) | |
| |) | |
| Consumer Information and Disclosure |) | CG Docket No. 09-158 |
| |) | |
| Truth-in-Billing and Billing Format |) | CG Docket No. 98-170 |
| |) | |

To: The Secretary

COMMENTS

1 800 COLLECT, Inc. ("1 800 COLLECT"), by its attorneys, hereby submits these Comments in response to the Notice of Proposed Rulemaking recently issued by the Commission in the above-referenced proceeding (the "NPRM" or "Cramming NPRM").¹ Many of the rules proposed by the Commission to address the problem of cramming are reasonable and proportionate: they will help prevent unauthorized charges from appearing on consumers' phone bills without unduly burdening legitimate businesses. Other proposals, however, including the proposal to prohibit any and all third-party charges from carriers' phone bills, would impose significant, and in some cases, fatal costs on legitimate businesses that are engaged in providing communications services to consumers. There is no evidence in the record supporting the need for, or the effectiveness of, such drastic measures. The Commission should reject such

¹ *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")*, Notice of Proposed Rulemaking, 26 FCC Rcd 10021 (2011). *See also* 76 Fed. Reg. 52625 (Aug. 23, 2011).

overbroad proposals and adopt the proposed rules set forth in Appendix A to the Cramming NPRM. In support thereof, 1 800 COLLECT states as follows.

By way of background, 1 800 COLLECT is a communications company that, for nearly two decades now, has provided a collect call service whereby called parties who voluntarily accept collect calls are billed via their local carrier's monthly bill for those calls. When a calling party dials 1 800 COLLECT, an operator takes the party's first and last name as well as the number the party wishes to call. The operator puts the call through, and if the called party accepts the call, the charge will show up on the called party's telephone bill as a third-party charge.

While over the years, mobile telephony and VoIP services have changed the nature of consumer reliance on collect calling, collect calls remain a vital communications service relied upon by consumers, including, most significantly, low-income consumers.² Consumers typically turn to 1 800 COLLECT on an occasional, as-needed basis, and 1 800 COLLECT provides a reliable safety net service for those callers. Recognizable segments of the population, such as hospital patients and their families and detention facility inmates, by necessity, must rely upon collect calling services in order to reach family and friends. And, even as payphones continue to dwindle in number, collect calling still appeals to mainstream consumers as an important telecommunications option when other calling options are not available. 1 800 COLLECT is not

² We direct the Commission's attention to the *ex parte* communication of the Minority Media and Telecommunications Council ("MMTC"), dated October 15, 2011, in WC Docket No. 10-90, where that group, in referring to payphone service, which is often used by the same customer base as use collect calling services, made note that twenty percent of American adults do not have mobile phones and cannot afford cellular or wireline services, and, therefore, have to rely on payphones and, we submit, collect calling services, to communicate with others, especially in times of emergencies. MMTC's conclusion is particular telling: "we must not abandon those who simply cannot afford access." That conclusion also applies to collect calling.

the only prominent entity providing collect calling services; AT&T, one of the two major national telecommunications services providers, offers its well-known brand, 1-800- CALL-ATT, for individuals who desire to make collect calls.

Rather than disappear, 1 800 COLLECT submits that the role of collect calling as a safety net telecommunications service is poised to assume renewed importance in the mobile telephony context. Prepaid mobile is one of the fastest growing segments in the wireless industry: current estimates put the number of prepaid mobile users at 65 million and growing. Today, when prepaid customers fail to timely pay for service, their accounts are suspended and they cannot make calls (except to 911) until they make their required payments. Each month, an estimated one-third of prepaid customers – more than 20 million people – go without service on an average of three to five before they are able to pay their balance and have service restored. 1-800-COLLECT for mobile (which allows prepaid mobile users with suspended accounts to make collect calls on their mobile devices) gives suspended mobile subscribers another way to complete an important call, thus providing a useful safety net to a large segment of wireless customers.

Companies such as 1 800 COLLECT are only able to develop such innovative telecommunications solutions and offer them to consumers based upon cost savings and efficiencies in other areas of their business. Specifically, 1 800 COLLECT's billing arrangement with large carriers, via an aggregator, allows 1 800 COLLECT to keep costs down. Use of the aggregator grants 1 800 COLLECT the opportunity to work with large carriers that might otherwise refuse to do business with small companies, and the carriers' billing service, in turn,

allows 1 800 COLLECT to outsource efficiently a portion of its operations that might otherwise prove to be a drain on its revenue.

Turning to the instant Cramming NPRM, 1 800 COLLECT recognizes that cramming is unacceptable, and that reasonable steps should be taken to prevent unauthorized charges from appearing on consumers' telephone bills. However, in considering the issue of cramming, 1 800 COLLECT urges the Commission to distinguish between illegitimate, unauthorized charges for non-communications services, on the one hand, and legitimate billing mechanisms for communications services, on the other, and to weed out the former while safeguarding the latter. 1 800 COLLECT submits that the proposed rules contained in Appendix A to the NPRM succeed in doing just that: they target cramming abuses while leaving room for legitimate third-party billing for communications services on carrier bills.

The Commission's proposed rules, as set forth in Appendix A, contain the following practical, balanced provisions:

- where charges for two or more carriers appear on the same telephone bill, the charges must be separated by service provider, and where charges for non-carrier service providers appear on a telephone bill, the charges must be placed in a distinct section separate from all carrier charges;
- carrier websites and telephone bills must clearly and conspicuously provide FCC contact information for the submission of complaints; and

- carriers that offer the option to block third-party charges from appearing on phone bills must clearly and conspicuously notify subscribers of such option at the point of sale, on each phone bill and on carrier websites.³

These provisions offer targeted means of both preventing and remedying cramming abuses without interrupting or overturning the carrier-aggregator-third party billing system that helps bring valuable third-party services, such as collect calls and other communications services, to consumers. Such regulations strike the appropriate balance between preventing the appearance of unauthorized charges on consumer phone bills and permitting legitimate businesses offering communications services to utilize authorized and effective billing practices.

Similarly, 1 800 COLLECT believes that the proposal to include appropriate third-party contact information on bills containing third-party charges, represents a reasonable and effective anti-cramming regulation.⁴ Such a requirement provides direct consumer access to, and places direct responsibility upon, the third-party service provider, while placing only a modest burden upon the carrier printing the monthly phone bill. 1 800 COLLECT is of the opinion that the inclusion of third-party contact information on carrier bills is an effective, common sense approach that addresses the problem of cramming while preserving the cost-saving aspects of carrier-aggregator-third-party billing arrangements. 1 800 COLLECT further agrees that the proposed requirement that carriers notify subscribers if they do not offer blocking of third-party charges is a reasonable regulation that provides consumers with the tools and information

³ See *NPRM* at Appendix A.

⁴ See *NPRM* at ¶ 55.

necessary to make fully informed decisions about their telephone service, including whether they wish to change their authorized carrier to another telephone services provider.⁵

A number of proposed regulations discussed in the NPRM, however, fail to account for legitimate third-party billing arrangements in their effort to outlaw cramming, and constitute undue burdens on legitimate third-party service providers and carriers alike. First, the proposed ban on any and all third-party charges fatally harms legitimate communications services in its effort to curtail cramming abuses.⁶ As set forth above, legitimate businesses, such as 1 800 COLLECT, with its long history of service to those members of the public that wish to make use of casual collect calling services, rely upon third-party billing arrangements to provide services to consumers in an efficient, cost-effective manner. The proposed ban on all third-party charges unreasonably lumps such legitimate communications services in with illegitimate and unauthorized charges on consumers' phone bills. As such, such sweeping, across-the-board regulation relies upon a crude classification that defies practical reality and cannot survive legal scrutiny. If the Commission remains committed to a ban on third-party charges, it must limit that ban to those charges most often implicated in cramming schemes, which have never included collect calling by such reputable services as 1 800 COLLECT and 1-800-CALL-ATT. For instance, the Commission could limit the ban to third-party charges from non-telecommunications service providers (as opposed to third-party telecom service providers, such as 1 800 COLLECT, with strong ties to the communications industry and a clear record of bona fide service), and/or to the recurring, subscription –style fees that often comprise the unauthorized charges of cramming schemes (as opposed to occasional, as-needed service charges

⁵ See NPRM at ¶ 59.

⁶ See NPRM at ¶ 62.

from legitimate companies such as 1 800 COLLECT). Without such distinctions between legitimate and illegitimate services and/or charges, the proposed regulations are arbitrary and capricious and contrary to law.

Similarly, the proposed regulation requiring carriers to block third-party charges upon request fails to account for the importance of such billing mechanisms to legitimate businesses, and conflates unauthorized charges with charges for legitimate services. Other, less intrusive regulations – such as the inclusion of third-party contact information on carrier bills – effectively address concerns with unauthorized charges while recognizing the legitimacy and operational-importance of third-party billing procedures. The proposed opt-in or opt-out provisions, whereby callers could choose to participate or not participate in third-party billing, along with the proposed ban on all third-party charges, represent unreasonable and draconian regulatory measures that would prove to be counterproductive and unnecessary, given the availability of more balanced and effective approaches to the problem of cramming. In sum, the Commission should reject extreme measures such as the absolute ban on third-party charges and the requirement for carriers to grant subscribers the option of blocking third-party charges, and adopt the reasonable measures proposed in Appendix A to the Cramming NPRM. Further, in adopting any form of regulation to deal with cramming, the Commission should establish a bright line between legitimate communications services and non-communications services; the former should always be permitted to constitute third-party charges while the latter may be subject to regulation meant to protect consumers from unauthorized charges.

WHEREFORE, 1 800 COLLECT, Inc. respectfully requests that the Commission reject those proposals, identified above, that would impose significant and unnecessary burdens on

legitimate businesses and instead adopt the reasonable, well-balanced set of rules proposed in Appendix A to the Cramming NPRM that do not negatively impact the ability of communications services to bill consumers through third-party billing arrangements on telephone carrier bills.

Respectfully submitted,

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Dated: October 24, 2011